

104TH CONGRESS
1ST SESSION

S. 905

To provide for the management of the airspace over units of the National Park System, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 9 (legislative day, JUNE 5), 1995

Mr. AKAKA introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To provide for the management of the airspace over units of the National Park System, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Parks Air-
5 space Management Act of 1995”.

6 **SEC. 2. FINDINGS.**

7 The Congress makes the following findings:

8 (1) Commercial air tour flights over units of the
9 National Park System (referred to in this Act as
10 “units”) may have adverse effects on the units. The

1 flights may degrade the experiences of visitors to the
2 affected areas and may have adverse effects on wild-
3 life and cultural resources in those areas. A signifi-
4 cant number of complaints about commercial air
5 tour flights over certain areas under the jurisdiction
6 of the National Park Service have been registered.

7 (2) Whereas resource preservation is the pri-
8 mary responsibility of the National Park Service, the
9 agency continues to struggle to develop a policy that
10 would achieve an acceptable balance between flights
11 over units by commercial air tour operators and the
12 protection of resources in the units and the experi-
13 ences of visitors to the units.

14 (3) Whereas the mission of the Federal Avia-
15 tion Administration is to develop and maintain a
16 safe and efficient system of air transportation while
17 considering the impact of aircraft noise, the agency
18 continues to have difficulty adequately controlling
19 commercial air tour flights over units.

20 (4) Significant and continuing concerns exist
21 regarding the safety of commercial air tour flights
22 over some units, including concerns for the safety of
23 occupants of the flights, visitors to those units, Fed-
24 eral employees at those units, and the general pub-
25 lic. The concern of the Congress over the effects of

1 low-level flights on units led to the enactment, on
2 August 18, 1987, of the Act entitled “An Act to re-
3 quire the Secretary of the Interior to conduct a
4 study to determine the appropriate minimum alti-
5 tude for aircraft flying over national park system
6 units” (Public Law 100–91; 101 Stat. 674; 16
7 U.S.C. 1a–1 note). The Act requires the Director to
8 identify problems associated with flights by aircraft
9 in the airspace over units.

10 (5) Pursuant to the Act referred to in para-
11 graph (4), on September 12, 1994, the Director sub-
12 mitted a report to Congress entitled “Report On Ef-
13 fects Of Aircraft Overflights On The National Park
14 System”. The National Park Service report con-
15 cluded that, because the details of national park
16 overflights problems are park-specific, no single alti-
17 tude can be identified for the entire National Park
18 System. The National Park Service report presented
19 a number of recommendations for resolution of the
20 problem, including—

21 (A) the development of airspace and park
22 use resolution processes;

23 (B) the development of a single operational
24 rule to regulate air tour operations;

1 (C) seeking continued improvements in
2 safety and interagency planning related to air-
3 space management; and

4 (D) the development of a Federal Aviation
5 Administration rule to facilitate preservation of
6 natural quiet.

7 (6) The policy of the National Park Service rec-
8 ognizes the importance of natural quiet as a re-
9 source to be conserved and protected in certain
10 units. The National Park Services defines natural
11 quiet as “the natural ambient sound conditions
12 found in certain units of the National Park Service”
13 and recognizes that visitors to certain units may rea-
14 sonably expect quiet during their visits to those
15 units established with the specific goal of providing
16 visitors with an opportunity for solitude.

17 (7) The number of flights by aircraft over units
18 has increased rapidly since the date of enactment of
19 the Act referred to in paragraph (4) and, due to the
20 high degree of satisfaction expressed by air tour pas-
21 sengers, as well as the economic impact of air tour
22 operations on the tourist industry, the number of
23 flights will likely continue to increase. A progression
24 of aesthetic and safety concerns about low altitude
25 flights have been associated with growth in commer-

1 cial air tour traffic. As the number of flights contin-
2 ues to increase, the likelihood exists that there will
3 be a concomitant increase in the number of conflicts
4 regarding management of the airspace over the
5 units.

6 (8) A need exists for a Federal policy to ad-
7 dress the conflicts and problems associated with
8 flights by commercial air tour aircraft in the air-
9 space over units. A statutory process should be es-
10 tablished to require the Secretary of Transportation
11 and the Secretary of the Interior, acting through the
12 Director, to work together to mitigate the impact of
13 commercial air tour operations on units, or specific
14 areas within units that are adversely affected by
15 commercial air tour operations.

16 **SEC. 3. DEFINITIONS.**

17 For the purposes of this Act, the following definitions
18 shall apply:

19 (1) ADMINISTRATOR.—The term “Adminis-
20 trator” means the Administrator of the Federal
21 Aviation Administration.

22 (2) AGREEMENT.—The term “agreement”
23 means an agreement entered into by a commercial
24 air tour operator, the Director, and the Adminis-
25 trator under section 4(h) that provides for the appli-

1 cation of relevant provisions of an airspace manage-
2 ment plan for the unit concerned to the commercial
3 air tour operator.

4 (3) AIR TOUR AIRCRAFT.—The term “air tour
5 aircraft” means an aircraft (including a fixed-wing
6 aircraft or a rotorcraft) that makes air tour flights.

7 (4) AIR TOUR FLIGHT.—The term “air tour
8 flight” means a passenger flight conducted by air
9 tour aircraft for the purpose of permitting a pas-
10 senger to the flight to view an area over which the
11 flight occurs.

12 (5) COMMERCIAL AIR TOUR AIRCRAFT.—The
13 term “commercial air tour aircraft” means any air
14 tour aircraft used by a commercial air tour operator
15 in providing air tour flights for hire to the public.

16 (6) COMMERCIAL AIR TOUR OPERATOR.—The
17 term “commercial air tour operator” means a com-
18 pany, corporation, partnership, individual, or other
19 entity that provides air tour flights for hire to the
20 public.

21 (7) COUNCIL.—The term “Council” means the
22 National Park Overflight Advisory Council estab-
23 lished under section 9.

24 (8) DIRECTOR.—The term “Director” means
25 the Director of the National Park Service.

1 (9) FLIGHT-FREE PARK.—The term “flight-free
2 park” means a unit over which commercial air tour
3 operations are prohibited.

4 (10) UNIT.—The term “unit” means a unit of
5 the National Park System.

6 **SEC. 4. NATIONAL PARK AIRSPACE MANAGEMENT PLANS.**

7 (a) IN GENERAL.—The Director and the Adminis-
8 trator shall, in accordance with this section, develop and
9 establish a plan for the management of the airspace above
10 each unit that is affected by commercial air tour flights
11 to the extent that the Director considers the unit to be
12 a unit requiring an airspace management plan.

13 (b) PLAN PURPOSE.—The purpose of each plan de-
14 veloped under subsection (a) is to minimize the adverse
15 effects of commercial air tour flights on the resources of
16 a unit.

17 (c) DEVELOPMENT OF AIRSPACE MANAGEMENT
18 PLANS.—

19 (1) TREATMENT OF RELEVANT EXPERTISE.—In
20 developing plans under subsection (a), the Adminis-
21 trator shall defer to the Director in matters relating
22 to the identification and protection of park re-
23 sources, and the Director shall defer to the Adminis-
24 trator in matters relating to the safe and efficient
25 management of airspace.

1 (2) NEGOTIATED RULEMAKING.—In developing
2 a plan for a unit, the Director and the Adminis-
3 trator shall consider utilizing negotiated rulemaking
4 procedures as specified under subchapter III of
5 chapter 5 of title 5, United States Code, if the Di-
6 rector and the Administrator determine that the uti-
7 lization of those procedures is in the public interest.

8 (d) COMMENT ON PLANS.—In developing a plan for
9 a unit, the Director and the Administrator shall—

10 (1) ensure that there is sufficient opportunity
11 for public comment by air tour operators, environ-
12 mental organizations, and other concerned parties;
13 and

14 (2) give due consideration to the comments and
15 recommendations of the Council and the Federal
16 Interagency Airspace/Natural Resource Coordination
17 Group, or any successor organization to that entity.

18 (e) RESOLUTION OF PLAN INADEQUACIES.—If the
19 Director and the Administrator disagree with respect to
20 any portion of a proposed plan under subsection (a), the
21 Director and the Administrator shall refer the proposed
22 plan to the Secretary of the Interior and the Secretary
23 of Transportation, and the Secretaries shall jointly resolve
24 the disagreement.

1 (f) ASSESSMENT OF EFFECTS OF OVERFLIGHTS.—

2 The Director and the Administrator may jointly conduct
3 studies to ascertain the effects of low-level flights of com-
4 mercial air tour aircraft over units that the Director and
5 the Administrator consider necessary for the development
6 of plans under subsection (a).

7 (g) PERIODIC REVIEW.—Not less frequently than
8 every 5 years after the date of establishment of a plan
9 under subsection (a), the Director and the Administrator
10 shall review the plan. The purpose of the review shall be
11 to ensure that the plan continues to meet the purposes
12 for the plan. The Director and the Administrator may re-
13 vise a plan if they jointly determine, based on that review,
14 that the revision is advisable.

15 (h) FLIGHTS OVER UNITS COVERED BY PLANS.—

16 (1) AGREEMENT.—A commercial air tour oper-
17 ator may not conduct commercial air tour flights in
18 the airspace over a unit covered by an airspace man-
19 agement plan developed under subsection (a) unless
20 the commercial air tour operator enters into an
21 agreement with the Director and the Administrator
22 that authorizes such flights.

23 (2) CONTENTS.—An agreement under para-
24 graph (1) shall—

1 (A) provide for the application of relevant
2 provisions of the airspace management plan for
3 the unit concerned to the commercial air tour
4 operator; and

5 (B) to the maximum extent practicable,
6 provide for the conduct of air tour flights by
7 the air tour operator in a manner that mini-
8 mizes the adverse effects of the air tour flights
9 on the environment of the unit.

10 **SEC. 5. FLIGHT-FREE PARKS.**

11 For units that, as of January 1, 1995, experienced
12 no overflights by commercial air tour operators, the Direc-
13 tor, in consultation with the Administrator, shall—

14 (1) prescribe criteria to identify units where air
15 tour flights by commercial air tour aircraft would be
16 incompatible with or injurious to the purposes and
17 values for which the units were established;

18 (2) identify any units that meet those criteria;
19 and

20 (3) designate those units as “flight-free park”
21 units.

22 **SEC. 6. SINGLE OPERATIONAL RULE FOR COMMERCIAL AIR**
23 **TOUR OPERATIONS.**

24 (a) IN GENERAL.—Except as provided in subsection
25 (b), the Administrator, after notice and hearing on the

1 record, shall issue a regulation governing the operation of
2 all air tour aircraft flights by commercial air tour opera-
3 tors over units.

4 (b) SEPARATE OPERATIONAL RULES.—

5 (1) IN GENERAL.—The Administrator may pre-
6 scribe separate operational rules governing the con-
7 duct of flights by fixed-wing aircraft and by rotor-
8 craft if the Administrator determines under sub-
9 section (a) that separate rules are warranted.

10 (2) DEVELOPMENT OF OPERATIONAL RULE.—
11 In developing an operational rule under paragraph
12 (1), the Administrator shall—

13 (A) consider whether differences in the
14 characteristics and effects on the environment
15 of fixed-wing aircraft and rotorcraft warrant
16 the development of separate operational rules
17 with respect to that craft;

18 (B) provide a mechanism for the Director
19 to recommend individual units or geographically
20 proximate groups of units to be designated as
21 aerial sightseeing areas, as defined by section
22 92.01 of the Federal Aviation Administration
23 Handbook, dated January 1992; and

24 (C) provide a mechanism for the Director
25 to obtain immediate assistance from the Admin-

1 istrator in resolving issues relating to the use of
2 airspace above units with respect to which the
3 issues are of a critical, time-sensitive nature.

4 (d) EFFECT ON AGREEMENTS.—Nothing in this sec-
5 tion is intended to preclude the Administrator, the Direc-
6 tor, and a commercial air tour operator from entering into,
7 under section 4(h), an agreement on the conduct of air
8 tour flights by the air tour operator over a particular unit
9 under different terms and conditions from those imposed
10 by an operational rule promulgated under this subsection.

11 **SEC. 7. AIRCRAFT SAFETY.**

12 (a) DEVELOPMENT OF A SINGLE STANDARD FOR
13 CERTIFYING COMMERCIAL AIR TOUR OPERATORS.—

14 (1) COMMENCEMENT OF RULEMAKING.—The
15 Administrator shall initiate formal rulemaking pro-
16 ceedings (which shall include a hearing on the
17 record) for the purpose of revising the regulations
18 contained in part 135 of title 14, Code of Federal
19 Regulations (relating to air taxi operators and com-
20 mercial operators), to prescribe a new subpart to
21 specifically cover all commercial air tour operators
22 (as that term shall be defined by the Federal Avia-
23 tion Administration under the subpart) that conduct
24 commercial air tour flights over units.

1 (2) COVERED MATTERS.—The regulations pre-
2 scribed under subsection (a) shall address safety and
3 environmental issues with respect to commercial air
4 tour flights over units. In prescribing the regula-
5 tions, the Administrator shall attempt to minimize
6 the financial and administrative burdens imposed on
7 commercial air tour operators.

8 (b) AIRCRAFT MARKINGS.—

9 (1) REQUIREMENT.—Each operator of commer-
10 cial air tour aircraft shall display on each air tour
11 aircraft of the operator the identification marks de-
12 scribed in paragraph (2).

13 (2) IDENTIFICATION MARKS.—The identifica-
14 tion marks for the aircraft of a commercial air tour
15 operator shall—

16 (A) be unique to the operator;

17 (B) be not less than 36 inches in length
18 (or a size consistent with the natural configura-
19 tion of the aircraft fuselage);

20 (C) appear on both sides of the air tour
21 aircraft of the air tour operator and on the un-
22 derside of the aircraft; and

23 (D) be applied to the air tour aircraft of
24 the air tour operator in a highly visible color

1 that contrasts sharply with the original base
2 color paint scheme of the aircraft.

3 (c) AERONAUTICAL CHARTS.—The Administrator
4 shall ensure that the boundaries of each unit and the pro-
5 visions of the airspace management plan, operational rule,
6 or Special Federal Aviation Regulation (SFAR), if any,
7 with respect to each unit are accurately displayed on aero-
8 nautical charts.

9 (d) FLIGHT MONITORING SYSTEMS.—

10 (1) IN GENERAL.—The Administrator shall
11 carry out a study of the feasibility and advisability
12 of requiring that commercial air tour aircraft operat-
13 ing in the airspace over units have onboard an auto-
14 matic flight tracking system capable of monitoring
15 the altitude and ground position of the commercial
16 air tour aircraft.

17 (2) DETERMINATION BY ADMINISTRATOR.—If
18 the Administrator determines under the study re-
19 quired under paragraph (1) that the use of flight
20 tracking systems in commercial air tour aircraft is
21 feasible and advisable, the Administrator and the
22 Director shall jointly develop a plan for implement-
23 ing a program to monitor the altitude and position
24 of commercial air tour aircraft over units.

1 (e) NATIONAL DATA BASE FOR COMMERCIAL AIR
2 TOUR OPERATORS.—The Administrator shall—

3 (1) establish and maintain a data base concern-
4 ing all commercial air tour aircraft operated by com-
5 mercial air tour operators that shall be designed to
6 provide data that shall be used in making—

7 (A) determinations of—

8 (i) the scope of commercial air tour
9 flights; and

10 (ii) accident rates for commercial air
11 tour flights; and

12 (B) assessments of the safety of commer-
13 cial air tour flights; and

14 (2) on the basis of the information in the data
15 base established under paragraph (1), ensure that
16 each Flight Standards District Office of the Admin-
17 istration that serves a district in which commercial
18 air tour operators conduct commercial air tour
19 flights is adequately staffed to carry out the pur-
20 poses of this Act.

21 **SEC. 8. EXCEPTIONS.**

22 (a) FLIGHT EMERGENCIES.—This Act shall not
23 apply to any aircraft experiencing an in-flight emergency,
24 participating in search and rescue, firefighting or police
25 emergency operations, carrying out park administration or

1 maintenance operations, or complying with air traffic con-
2 trol instructions.

3 (b) FLIGHTS BY MILITARY AIRCRAFT.—This Act
4 shall not apply to flights by military aircraft, except that
5 the Secretary of Defense is encouraged to work jointly
6 with the Secretary of Transportation and the Secretary
7 of Interior in pursuing means to mitigate the impact of
8 military flights over units.

9 (c) FLIGHTS FOR COMMERCIAL AERIAL PHOTOG-
10 RAPHY.—The Director and the Administrator shall jointly
11 develop restrictions and fee schedules for aircraft or rotor-
12 craft engaged in commercial aerial photography over units
13 at altitudes that the Director and the Administrator deter-
14 mine will impact adversely the resources and values of af-
15 fected units.

16 **SEC. 9. NATIONAL PARK OVERFLIGHT ADVISORY COUNCIL.**

17 (a) ESTABLISHMENT.—There is established a com-
18 mission to be known as the “National Park Overflight Ad-
19 visory Council”.

20 (b) MEMBERSHIP.—

21 (1) IN GENERAL.—The Council shall be com-
22 prised of members from each of the following
23 groups, appointed jointly by the Director and the
24 Administrator:

1 (A) Environmental or conservation organi-
2 zations, citizens' groups, and other groups with
3 similar interests.

4 (B) The commercial air tour industry and
5 organizations with similar interests.

6 (C) Representatives of departments or
7 agencies of the Federal Government.

8 (D) Such other persons as the Adminis-
9 trator and the Director consider appropriate.

10 (c) DUTIES.—The Council shall—

11 (1) determine the effects of commercial air tour
12 flights in the airspace over the units on the environ-
13 ment of the units;

14 (2) determine the economic effects of restric-
15 tions or prohibitions on the flights;

16 (3) solicit and receive comments from interested
17 individuals and groups on the flights;

18 (4) develop recommendations for means of re-
19 ducing the adverse effects of the flights on the units;

20 (5) explore financial and other incentives that
21 could encourage manufacturers to advance the state-
22 of-the-art in quiet aircraft and rotorcraft technology
23 and encourage commercial air tour operators to im-
24 plement the technology in flights over units;

1 (6) provide comments and recommendations to
2 the Director and the Administrator under section 4;

3 (7) provide advice or recommendations to the
4 Director, the Administrator, and other appropriate
5 individuals and groups on matters relating to flights
6 over units; and

7 (8) carry out such other activities as the Direc-
8 tor and the Administrator jointly consider appro-
9 priate.

10 (d) MEETINGS.—The Council shall first meet not
11 later than 180 days after the date of enactment of this
12 Act, and shall meet thereafter at the call of a majority
13 of the members of the Council.

14 (e) ADMINISTRATION.—

15 (1) COMPENSATION OF NON-FEDERAL MEM-
16 BERS.—Members of the Council who are not officers
17 or employees of the Federal Government shall serve
18 without compensation for their work on the Council,
19 but shall be allowed travel expenses, including per
20 diem in lieu of subsistence, in the same manner as
21 persons employed intermittently in the Government
22 service under section 5703(b) of title 5, United
23 States Code, to the extent funds are available there-
24 for.

1 (2) COMPENSATION OF FEDERAL MEMBERS.—

2 Members of the Council who are officers or employ-
3 ees of the Federal Government shall serve without
4 compensation for their work on the Council other
5 than that compensation received in their regular
6 public employment, but shall be allowed travel ex-
7 penses, including per diem in lieu of subsistence, as
8 authorized by law, to the extent funds are available
9 therefor.

10 (f) REPORTS.—The Council shall annually submit to
11 Congress, the Administrator, and the Director a report
12 that—

13 (1) describes the activities of the Council under
14 this section during the preceding year; and

15 (2) sets forth the findings and recommenda-
16 tions of the Council on matters related to the miti-
17 gation of the effects on units of flights of commer-
18 cial air tour operators over units.

19 (g) AUTHORIZATION OF APPROPRIATIONS.—There
20 are authorized to be appropriated such sums as may be
21 necessary to carry out the provisions of this section.

22 **SEC. 10. EXEMPTION FOR STATE OF ALASKA.**

23 Nothing in this Act shall affect—

24 (1) the management of units in the State of
25 Alaska; or

- 1 (2) any aircraft operations over or within units
- 2 in the State of Alaska.



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